

SERVICE DATE – JANUARY 4, 2017

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. NOR 42121

TOTAL PETROCHEMICALS & REFINING USA, INC.

v.

CSX TRANSPORTATION, INC.

Digest:¹ The Board dismisses petitions for reconsideration and technical corrections as moot.

Decided: January 3, 2017

In this decision, the Board dismisses as moot the petitions of CSX Transportation, Inc. (CSXT) for technical corrections and reconsideration of the Board's decision served on September 14, 2016.

BACKGROUND

On May 3, 2010, Total Petrochemicals & Refining USA, Inc. (TPI) filed a complaint challenging the reasonableness of rates established by CSXT for the transportation of polypropylene, polystyrene, polyethylene, styrene, and base chemicals between 104 origin and destination pairs, located primarily in the Midwestern and Southeastern United States. TPI subsequently filed four amended complaints in which it added and then removed a number of short line defendants, among other changes. In May 2013, the Board found that CSXT has market dominance over some, but not all, of the rates challenged by TPI. Total Petrochems. & Ref. USA, Inc. v. CSX Transp., Inc., NOR 42121, slip op. at 29 (STB served May 31, 2013), reconsideration denied (STB served Dec. 19, 2013) (with Board Member Begeman dissenting in both), pet. for review dismissed sub nom. CSX Transp., Inc. v. STB, 774 F.3d 25 (D.C. Cir. 2014). TPI subsequently withdrew its challenge as to certain other lanes. (TPI Opening I-1 to I-2 (stating that TPI was withdrawing its challenge as to six lanes).) Ultimately, TPI challenged 69 rates that govern 88 lanes of movements,² pursuing relief under the agency's stand-alone cost (SAC) test.

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

² A lane designates a movement of a particular commodity between an origin and destination.

On September 14, 2016, the Board found that TPI had not demonstrated that the challenged rates were unreasonable under the SAC test. Total Petrochems. & Ref. USA, Inc. v. CSX Transp., Inc., NOR 42121, slip op. at 29 (STB served Sept. 14, 2016) (with Board Member Begeman dissenting in part) (Decision). As part of the SAC test, the Board's discounted cash flow analysis compares the revenues a hypothetical stand-alone railroad (SARR) created by the complainant is expected to earn from the selected traffic group against the revenues the SARR would need to serve that same traffic group. In this instance, the Board's analysis found that the SARR would earn less from the traffic group than it would require to serve the same traffic. Accordingly, the Board declined to prescribe rates for TPI's traffic.

On October 24, 2016, CSXT filed a petition for technical corrections and a petition for reconsideration. On November 21, 2016, CSXT submitted a letter noting that TPI did not file a reply to CSXT's petitions and did not seek judicial review of the Decision within the time required under the Hobbs Act, 28 U.S.C. § 2344. It stated that, in these circumstances, "the Board would be justified in finding [the items in its petitions] not to be material and to not justify the expenditure of additional Board resources."

DISCUSSION AND CONCLUSIONS

When a party requesting relief is not aggrieved—for example, due to a Board decision in that party's favor—the Board may dismiss the request for relief as moot. See, e.g., Twp. of Woodbridge, N.J. v. Consol. Rail Corp., NOR 42053, slip op. at 3 (STB served Mar. 23, 2001) (denying reconsideration because the Board granted clarification, which resolved the issue raised in the reconsideration petition); see also Ariz. Elec. Power Coop. v. BNSF Ry., NOR 42113, slip op. at 4 (STB served Sept. 2, 2015) (same); PYCO Indus., Inc.—Feeder Line Appl.—Lines of S. Plains Switching, Ltd., FD 34890 (STB served Dec. 20, 2007) (dismissing as moot reconsideration petitions filed by two parties in a feeder line application case once line was sold to different applicant); Burlington N. & Santa Fe Ry.—Aban. Exemption—in King Cty., Wash., AB 6 (Sub-No. 402X), slip op. at 2 (STB served Feb. 14, 2003) (dismissing as moot petition to exempt abandonment from offer of financial assistance requirements where no offers of financial assistance or notices of intent were filed).

Here, the only party seeking review of the Decision in any forum is CSXT, which prevailed in the instant proceeding. Although not dispositive, CSXT has effectively acknowledged the mootness of its two petitions, stating that the Board would be justified in deciding not to expend further resources on resolving these filings. (See CSXT Letter 2, Nov. 21, 2016.) Because CSXT is the only party seeking review, and it is not aggrieved, CSXT's petitions for reconsideration and technical corrections will be dismissed as moot.

It is ordered:

1. CSXT's petitions for reconsideration and technical corrections are dismissed as moot.
2. This decision is effective on its service date.

By the Board, Chairman Elliott, Vice Chairman Miller, and Commissioner Begeman.